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way & Power Company. Judgment for plaintiff, and defendant brings error. Affirmed.

Williams, Tunstall & Thom, of Norfolk, and *H. W. Anderson*, of Richmond, for plaintiff in error.

Rumble & Campe, of Norfolk, for defendant in error.

BOHANNON-KING & CO., Inc. *v.* VELLINES.

March 15, 1917.

[91 S. E. 620.]

Appeal and Error (§ 1002*)—Review—Verdict—Conflicting Evidence.—Where there was a conflict of evidence as to speed of defendant's automobile which collided with decedent's bicycle, the location of the accident, and decedent's contributory negligence, and the jury, being the judges of the weight of the testimony, found for plaintiff, judgment will be sustained; since under the statute the Appellate Court is required to consider such cases as under a demurrer to the evidence.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3935-3937.* 1 Va.-W. Va. Enc. Dig. 620.]

Appeal from Circuit Court of City of Norfolk.

Action by Fannie C. Vellines, administratrix of Herbert A. Vellines, deceased, against Bohannon-King & Co., Incorporated. Judgment for plaintiff, and defendant appeals. Affirmed.

W. H. Taylor and *Jas. H. Willock*, both of Norfolk, for plaintiff in error.

Willcox, Cooke & Willcox, of Norfolk, for defendant in error.

CLAY'S ADM'R *v.* KELLY.

March 15, 1917.

[91 S. E. 621.]

1. Partnership (§ 313*)—Suit for Accounting by Quasi Partner—Equity Jurisdiction.—Where a partnership was formed to undertake a government contract, and thereafter one partner withdrew, with the consent of the others, but later came back into the firm solely to sign its assignment of the contract, the other partners agreeing to pay him 10 per cent. of the profits they might realize, the withdrawing partner's relationship to the firm was not that of a full partner, but it was such as to entitle him upon the fundamental prin-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ciples of equity jurisdiction to sue the other partners for a disclosure and accounting of his share of the profits; the relationship being of a fiduciary character, and some of the items making up the alleged profits being particularly within the other partners' knowledge.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. §§ 679, 729, 729½.* 14 Va.-W. Va. Enc. Dig. 339.]

2. Partnership (§ 328 (2)*)—Suit for Accounting—Evidence.—In a partner's suit against others for disclosure of and accounting for profits realized in the matter of a government contract, testimony disclosing the transaction whereby defendants, after the surrender of the plant by the party with whom the firm had contracted, arranged with other parties to complete the work, was admissible.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 780.* 10 Va.-W. Va. Enc. Dig. 886.]

3. Partnership (§ 328 (2)*)—Suit for Accounting—Evidence.—In such suit, the record of a receivership suit against the partnership was admissible to show the facts appearing therein as to the partnership's transfer of the contract, the disposition of the firm's assets, and the payment therefor, though plaintiff partner was not a party to such suit, having withdrawn from the firm before it was brought; the matters shown in the record not being within the rule of evidence as to *res inter alios acta*.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 780.* 10 Va.-W. Va. Enc. Dig. 886.]

4. Partnership (§ 95*)—Withdrawal—Consideration.—Where, after a partnership secured a contract with the government, one partner desired to withdraw, and the other partners terminated their relations with him, paying him \$500, he remaining bound as to the government and the firm's surety, such continuing obligation of his was sufficient consideration for the \$500 paid him.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 142.* 10 Va.-W. Va. Enc. Dig. 869.]

5. Partnership (§ 18*)—Contracts—Duress.—Where a partner, who had withdrawn from the firm with the consent of the other partners, was under no obligation or duty, contractual or otherwise, to the members of his old firm, he did not by duress procure his contract for a share in the firm's profits from a contract when he refused to sign a necessary assignment of the firm's contract, unless his partners agreed to pay him.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 4.* 10 Va.-W. Va. Enc. Dig. 869.]

6. Partnership (§ 19*)—Contracts—Consideration.—Where a partner who had withdrawn from the firm by consent signed an assignment by the firm of its contract with the government, the act

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was sufficient consideration for the other partners' contract to give him a share in the profits, though when he withdrew from the firm he remained liable to the government and the firm's surety.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 5.* 10 Va.-W. Va. Enc. Dig. 869.]

7. Partnership (§ 86*)—Accounting—Profits of Firm.—Where a firm agreed to pay a member who had withdrawn by consent a share of the profits realized by the firm from a government contract assigned by the firm, profits realized by the firm, after its assignee had failed to carry out the contract, by turning the work over to others, were profits realized by the firm in the matter of the contract with its assignee, to a share of which the partner who had withdrawn was entitled.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 134.* 10 Va.-W. Va. Enc. Dig. 881.]

Appeal from Chancery Court of Richmond.

Suit by M. Kelly against S. P. Clay and others, wherein Clay died pending suit; the cause being revived against his administrator. From a decree settling the principles of the cause in favor of complainant and directing an account, Clay's administrator appeals. Affirmed.

Leake & Buford, A. W. Patterson, and Cutchins & Cutchins, all of Richmond, for appellant.

A. L. Holladay and Kelley & Coulbourn, all of Richmond, for appellee.

WILLIAMS *v.* BOND et al.

March 15, 1917.

[91 S. E. 627.]

1. Trusts (§ 244*)—Death of Trustee—Duties of Executor.—The executor of a deceased person who during his life was charged with execution of a trust, which trust in part remained unexecuted on his death, has the duty under Code 1904, § 3419, of completing the execution of the trust.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. § 351.* 13 Va.-W. Va. Enc. Dig. 330.]

2. Trusts (§ 178*)—Death of Trustee—Duties of Executor—Actions.—Such executor therefore could properly bring suit to determine and construe the conditions of the will creating the trust where

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